

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

IGNACIO RIVERA)	
Claimant)	
)	
V.)	
)	
CARGILL MEAT SOLUTIONS CORP.)	
Respondent)	Docket No. 1,055,106
)	
AND)	
)	
CHARTIS CASUALTY COMPANY)	
Insurance Carrier)	

ORDER

STATEMENT OF THE CASE

Claimant requested review of the February 9, 2015, Award entered by Administrative Law Judge (ALJ) Pamela J. Fuller. The Board heard oral argument on June 9, 2015. Stanley R. Ausemus of Emporia, Kansas, appeared for claimant. D. Shane Bangerter of Dodge City, Kansas, appeared for respondent and its insurance carrier (respondent).

The ALJ found claimant's accidental injury arising out of and in the course of his employment on July 10, 2010, resulted in a 24 percent impairment to his left upper extremity at the level of the shoulder.

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

Claimant argues he is entitled to a functional impairment of 23 percent to the body as a whole.

Respondent maintains the Award should be affirmed.

The sole issue for the Board's review is: what is the nature and extent of claimant's disability?

FINDINGS OF FACT

On July 10, 2010, claimant sustained injury at respondent while lifting product. Claimant testified he injured his left arm, and the pain later went into his left shoulder. Claimant reported the incident to respondent and received medical treatment in the form of physical therapy, chiropractic treatment and medication. He underwent surgery on his left elbow and received three injections to his left shoulder. Claimant testified he continued to suffer problems with his left arm, including constant pain in his shoulder and elbow and loss of grip in his left hand, following treatment. He stated he had no issues with his left arm and shoulder prior to the July 2010 incident.

Dr. Pedro A. Murati, a licensed physician, evaluated claimant on February 6, 2013, at claimant's counsel's request. Claimant complained of left elbow pain with grasping and lifting and left shoulder, neck, and upper back pain. After reviewing claimant's available history, medical records, and performing a physical examination, Dr. Murati provided the following impressions:

Status post, "Excision of left olecranon bursa with cultures." Left carpal tunnel syndrome. Left shoulder rotator cuff sprain versus tear. Medial and lateral epicondylitis, left. Myofascial pain syndrome of the left shoulder girdle affecting the cervical and thoracic paraspinals.¹

Dr. Murati recommended permanent restrictions. He further noted claimant's "current diagnoses are within all reasonable medical probability a direct result from the work-related injury that occurred on 07-10-10 . . . during his employment with [respondent]." ² Dr. Murati testified it is more probable than not claimant will require future medical treatment.

Using the *AMA Guides*,³ Dr. Murati provided a rating opinion. He explained:

. . . for the left carpal tunnel syndrome, using table 16, this claimant receives 10% left upper extremity impairment. For the left medial epicondylitis, this claimant receives 3% left upper extremity impairment. For the left lateral epicondylitis, this claimant receives 3% left upper extremity impairment. For the loss of range of motion of the left shoulder, using figures 38, 41, and 44, this claimant receives 8% left upper extremity impairment. These left upper extremity impairments combine for 21% left upper extremity impairment which converts for 13% whole person impairment. For the Myofascial pain syndrome affecting the cervical paraspinals,

¹ Murati Depo. at 15.

² *Id.*, Ex. 2 at 5.

³ American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

this claimant is placed in Cervicothoracic DRE category II for 5% whole person impairment. For the Myofascial pain syndrome affecting the thoracic paraspinals, this claimant is placed in Thoracolumbar DRE Category II for 5% whole person impairment.⁴

Dr. Murati testified he believed claimant's condition was chronic and stable at the time of his evaluation. Dr. Murati noted claimant received injections to the left shoulder following his February 2013 examination, which may have improved claimant's range of motion. Dr. Murati testified he could not provide a rating opinion related to claimant's shoulder without an additional evaluation. He stated the remainder of his rating opinions remain unchanged.

Dr. Vito J. Carabetta examined claimant on March 28, 2014, for purposes of a court-ordered independent medical evaluation. Claimant complained of constant, aching pain in his left shoulder, which worsened with any upper extremity use and remained unimproved. Dr. Carabetta reviewed claimant's available history, medical records, and performed a physical examination. He reported impressions of status-post left olecranon bursectomy and left rotator cuff tendinitis. Dr. Carabetta also recommended permanent restrictions.

Using the AMA *Guides*, Dr. Carabetta opined:

As we consider [claimant's] left shoulder complaints, it appears that we are dealing with a relatively limited case of rotator cuff tendinitis. This is certainly not at the stage [where] a surgical intervention would be considered. Perhaps, however, as we implement physician judgment, he is about halfway to that point. If he were to have had a case of rotator cuff tendinitis that was indeed severe and upper surgical consideration, then as per Table 27 on page 61, half of the indicated 10% impairment of the left upper extremity would apply. Therefore, a 5% impairment of the left upper extremity would be appropriate for this diagnosis. As we consider the left elbow area, we do know that he has undergone an olecranon bursectomy procedure. This has compromised the left upper limb, and he has clear objectivity in terms of loss of grip strength. I would surmise that this is a direct and natural result of the injury he has had. . . . When the calculations are made, as per Table 34 on page 65, he has a calculated 33% Grip Strength Loss Index, then a 20% impairment of the left upper extremity would apply. As we next use the Combined Values Chart, we find that combination of impairment from the shoulder and elbow regions results in a 24% impairment of the left upper extremity. Based on the available information, this would be fully apportioned to the injury date of July 10, 2010 with this employer.⁵

⁴ Murati Depo., Ex. 2 at 5.

⁵ Carabetta IME at 5.

Claimant testified he continues to suffer constant pain in his left shoulder and elbow areas and cannot lift his left arm above the shoulder. Claimant stated he can no longer lift with his left hand due to pain in his left elbow when grabbing an object. Claimant continues to work for respondent.

ANALYSIS

At the oral argument of this matter before the Board held June 9, 2015, the parties were first made aware that a joint stipulation of medical records, which included the medical records of Drs. Alexander Neel and Alok Shah, was not received into the evidentiary record before the ALJ. The parties agreed it was their intention for the ALJ to review this evidence prior to making an award of compensation. The parties filed a Stipulation of Medical Records with the Board on June 23, 2015, which included the medical records of Drs. Neel and Shah. That filing has been received and accepted by the Board, and the attached medical records are now a part of the evidentiary record.

For reasons unknown by all involved, the ALJ was not allowed the opportunity to adequately review and evaluate this claim because of the missing evidence. As such, this matter is remanded to the ALJ for reevaluation of the case with the inclusion of the previously excluded evidence.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Pamela J. Fuller dated February 9, 2015, is remanded with directions to reevaluate the claim, including the evidence included in the Stipulation of Medical Records filed with the Board on June 23, 2015.

IT IS SO ORDERED.

Dated this _____ day of July, 2015.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant
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Pamela J. Fuller, Administrative Law Judge